IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5407 OF 2006

1. Smt Cicil Lawrence D'Souza, since deceased... and ors. .. Petitioners
Vs
1.Sebastian Anthony D'Souza,since deceased ... .. and ors. .. Respondents

Mr R.D.Mishra, for the petitioners.
Mr V.B. Naik, i/b M/s Shah and Sanghvi, for the respondent nos 1-A and 1-B.

CORAM : D.B.BHOSALE,J.
DATE : 10.10.2006

PC:

1. Heard the learned counsel for the parties. Rule. Returnable forthwith. Mr.Naik, learned counsel, waives service for respondent nos 1-A and 1-B. By consent, rule is heard forthwith.

2. The petitioners have challenged the order dated 3.4.2006, by which the learned Judge of the City Civil Court, Mumbai, has dismissed Chamber Summons No.1475 of 2005. The chamber summons was taken out by the petitioners for bringing on record the legal representatives of the deceased plaintiff no.2 - Rolly Lawrence D'Souza, who died on 13.4.2001. The chamber summons was taken out on 22.5.2005. The Court below has dismissed the chamber summons holding that no sufficient

cause for condonation of delay was shown. Mr Naik, learned counsel for the respondents, at the outset invited my attention to the statement made in paragraph 3 of the affidavit filed by the petitioner-plaintiff no.3 where he has stated that he had informed his advocate about the death of plaintiff no.2 in December, 2005 and submitted that plaintiff no.3 has made a false statement on affidavit and it is evident from the Roznama dated 6.3.2002. What Mr Naik submits may be true. However, that by itself, in my opinion, is not sufficient to dismiss the chamber summons seeking condonation of delay for bringing legal representatives of the deceased plaintiff no.3 on record. The petitioners-plaintiffs have filed the suit for declaration that they are the co-owners of the suit premises and are entitled for half share in the property. From the nature of the right claimed by the plaintiffs, prima facie it appears that their right and interest in the suit property is separate and, therefore, presence of the heirs of the deceased plaintiff would be necessary to avoid multiplicity of the proceedings. Admittedly, the suit has yet not reached the stage of evidence. No prejudice whatsoever would be caused to the respondents-defendants if the application is allowed. Section 5 of the Limitation Act confers sufficient powers on courts to condone delay in

order to enable to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice. In my opinion, the present case is one such case where the powers under section 5 of the Limitation Act deserves to be exercised for condoning the delay in filing the application for bringing the heirs of original plaintiff no.2 on record. Hence I pass the following order.

(i) The impugned order dated 3.8.2004 is quashed and set aside. Consequently, the chamber summons stands allowed. The delay is condoned subject to payment of cost of Rs.1000/- to be deposited in the trial court with liberty to the respondents-defendants to withdraw the same unconditionally. The petitioners are directed to carry out amendments within one week from the date of receipt of this order.

(ii) It is open for the respondents-defendants to file additional written statement if they so desire within a period of four weeks from the date of carrying out the amendment.

(iii) Rule is accordingly disposed of.

(D.B.BHOSALE,J.)